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ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Written statement submitted by the World Medical Association, a non-governmental organization on the Roster

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1996/31.

[24 February 1999]

GE.99-11430 (E)

World Medical Association proposal for a United Nations Rapporteur on the independence and integrity of health professionals

(Adopted by the 49th WMA General Assembly,
Hamburg, Germany, November 1997)

1. The World Medical Association (WMA) supports a proposal, put forward by a network of medical organizations* concerned with human rights issues, for the establishment of a new United Nations post of rapporteur on the independence and integrity of health professionals.

2. It is envisaged that the role of the rapporteur will supplement the work already done by a series of existing United Nations rapporteurs on issues such as torture, arbitrary executions, violence against women, etc. The new rapporteur would be charged with the task of monitoring that doctors are allowed to move freely and that patients have access to medical treatment, without discrimination as to nationality or ethnic origin, in war zones or in situations of political tension. The role of the proposed rapporteur is detailed below.

3. The original proposal was drawn up by a lawyer, Cees Flinterman, who is a professor of constitutional and international law at the University of Limburg, Maastricht, in the Netherlands. It has the support of a range of doctors' organizations,* whose interests are in protecting human rights and protecting doctors who act impartially in conflict situations. This group will be consulting widely and acting with the help of the International Commission of Jurists to interest the United Nations in this proposal.

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* Organizations participating in the network include: Amnesty International; British Medical Association; Centre for Enquiry into Health and Allied Themes (Bombay); Graza Community Mental Health; International Committee of the Red Cross; Physicians for Human Rights (in Denmark, Israel, South Africa, the United Kingdom and the United States of America); Turkish Medical Association; Johannes Weir Foundation.

ANNEX

Proposal for a rapporteur on the independence and integrity of health professionals

Goals

Accepting that in many situations of political conflict (such as civil or international war) or political tension (such as during suspension of civil rights in a Government-declared state of emergency), health professionals are often the first people outside the military or government circles to have detailed knowledge of human rights violations, including violations of the right of populations to access medical treatment, a network of physicians is anxious that a range of national and international reporting mechanisms be established to achieve the following goals:

1. To monitor the role of health professionals working in situations where either their rights to give, or the rights of their patients to receive treatment are threatened;

2. To make appeals for the protection of health professionals when they are in danger solely because of their professional or human rights activities;

3. To defend patients who are in danger of suffering human rights violations solely because of seeking medical treatment;

4. To encourage reporting of human rights violations by health professionals;

5. To analyse information about health professionals voluntarily adopting discriminatory practices.

The group considers that existing United Nations reporting mechanisms need expansion. Key among proposals for new mechanisms is the development of a new post of United Nations rapporteur which would link together relevant information emerging from other existing United Nations mechanisms and also suggest where other useful local and national reporting networks could be developed in the long term. Therefore, on the basis of materials prepared by the Law Department at the University of Limburg, Maastricht, and circulated by the Dutch medical group, the Johannes Wier Foundation, the group is campaigning for a new post of United Nations Rapporteur on the Independence and Integrity of Health Professionals.

Defining the role

The potential role of a United Nations rapporteur need not be exhaustively defined in advance since the experience of the individual and the practical applicability of the goals must have an influence. It should include the following:

(a) Receive, evaluate, investigate and report allegations of repression directed at health professionals or intended to prevent individuals

receiving medical care. The rapporteur should be a clearing house for reports from individuals, groups of doctors, NGOs, etc. and, as well as simply receiving information, should pro-actively seek out information, including on-site visits;

(b) To build upon existing principles as found in humanitarian law and the codes of medical ethics applicable in armed conflicts to develop specific guidelines on the subject of medical impartiality in relation to the treatment of patients in situations of political or armed conflict. The World Medical Association and national medical associations should be encouraged to disseminate such information to health professionals during their training. Arising also from such guidance should be the institution of mechanisms to help health professionals protect themselves in situations where human rights are at risk;

(c) The rapporteur should also have a consultative role, seeking the views of international and national professional associations, human rights bodies and humanitarian organizations with regard to the protection of health professionals and the defence of the right to treat patients impartially;

(d) The rapporteur should investigate reports of health professionals voluntarily transgressing guidelines about impartiality and non-discrimination.

Issues within the remit

The fundamental concern is to protect the nature of the doctor-patient relationship from unjustified external interference although it will also include voluntary transgressing of impartiality by health professionals. The rapporteur's role will be to ensure the independence, integrity and impartiality of health professionals. Ensuring these aims requires analysis of whether:

- the treatment decisions of health professionals can be carried out without coming into conflict with improper pressure from authorities;

- the physical integrity and ability of health professionals to act in accordance with their professional principles are both protected;

- health professionals are able to provide treatment on the basis of patient need;

- people in need of medical treatment are able to access it safely;

- health professionals are ensured their freedom of movement, in the capacity as medical care providers, and be able to have access to people in need of medical services.

Monitoring the degree to which external pressures influence negatively the provision of medical treatment will be within the remit of the rapporteur.

The remit will be global.

For lack of a reporting mechanism, health professionals are often disempowered from taking action on violations of patient rights. One of the issues for the rapporteur to monitor would be the introduction of national or local legislation, civil or military regulations or other rules prohibiting or limiting the provision of medical or nursing care to certain categories of patient.

It will be within the remit of the rapporteur to bring the evidence or reports of violations of medical impartiality, including by volunteer health professionals to responsible bodies in the medical field and to the Governments concerned.

Blanket restrictions on the medical or nursing services to be provided to members of vulnerable groups, such as refugees, asylum-seekers, prisoners, minority ethnic groups, should be among the issues monitored by the rapporteur. The rapporteur should contribute to the empowerment of the health professionals to resist collectively the erosion of such patients' rights.

Threats, intimidation or pressures on heath professionals to discriminate against patients on the basis solely of non-medical-related considerations such as ethnic, religious or racial affiliation should be investigated even if the threats do not materialize.

Reports of health professionals being harassed or detained simply because of their profession or because of the exercise of professional skills will be investigated by the rapporteur. Similarly, repressive measures designed to prevent health professionals reporting infringements of medical integrity will be investigated. Measures to encourage health professionals actively to document and report such violations should be put forward by the rapporteur in consultation with other bodies.

Reports of patients being impeded or discouraged from gaining access to the available medical treatment will be investigated.

Issues outside the remit

Just as important as defining what is within the rapporteur's remit is the matter of clarifying those issues which fall outside it. We anticipate that this too will become clearer as practice and experience develop. In the meantime, however, we suggest that:

(a) Health professionals in every country should be educated about the ethical responsibilities they have to patients and potential patients. Whereas such education is not within the remit of the rapporteur, acting as a resource for advice about medical impartiality would be within the rapporteur's remit. In the long term this function should ideally be dealt with by delegation through medical schools, professional bodies and voluntary national networks;

(b) While government measures to regulate aspects of care (such as the equitable distribution of medical resources or the prioritizing of treatment

on the basis of need) would not generally be a matter for monitoring for the rapporteur, extreme measures likely to result in the disenfranchising of groups of patients from medical or nursing services would be monitored and investigated;

(c) Governments' *indiscriminate* failure to provide health promotion or treatment to many or all sectors of the community does not fall within the remit of the rapporteur;

(d) Since a principal concern is to ensure access to medical treatment by patients who need and want it, the voluntary decision of some individuals or patient groups to exclude themselves (for example on religious or cultural grounds) from orthodox medicine does not fall within the remit of the rapporteur.

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